



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/22/02	Bill No:	SB 2082
Tax:	Cigarette	Author:	Bowen
Board Position:		Related Bills:	SB 1766 (Ortiz)

BILL SUMMARY

This bill would require any person who advertises on the Internet to sell cigarettes in California and is subject to the provisions of the Jenkins Act to conspicuously disclose that a purchaser who buys cigarettes that are shipped into California is responsible for paying the state excise tax and the state use tax and to show in the advertisement the amount of these taxes that would be due. This bill would also require the person selling or transferring the cigarettes to provide to the Board of Equalization a copy of the invoice for each shipment made into California.

ANALYSIS

Current Law

Under current law, Section 30101 of the Cigarette and Tobacco Products Tax Law imposes an excise tax of 6 mills (or 12 cents per package of 20) on each cigarette distributed. In addition, Section 30123 and 30131.2 impose a surtax of 12 ½ mills (25 cents per package of 20) and 25 mills (50 cents per package of 20), respectively, on each cigarette distributed. The current total tax on cigarettes is 43 ½ mills per cigarette (87 cents per package of 20). This excise tax is imposed upon each cigarette distribution, which is basically defined as the first sale of untaxed cigarettes in this state.

Section 30163 requires that a cigarette tax stamp be affixed to each package of cigarettes. Failure to have a stamp attached indicates that the cigarette tax has not been paid to the state.

Current law imposes a sales or use tax on the sale or purchase of tangible personal property in this state (including cigarettes). When a person buys cigarettes from a point outside this state for the use or consumption in this state, the use tax is due. If the out-of-state seller has nexus within the state, the seller is required to collect the use tax from the purchaser at the time of sale. If the seller does not collect the use tax, or if the seller does not have nexus in this state, the purchaser is required to pay the use tax directly to the Board of Equalization.

Chapter 10A of Title 15 of the United States Code (also known as the Jenkins Act) requires any person that sells or transfers cigarettes for profit in interstate commerce and ships the cigarettes into a state that imposes a tax on cigarettes to file by the 10th of each calendar month a copy of the invoice for each and every shipment of cigarettes made during the previous calendar month in that state. This information is required to show the name and address of the person to whom the shipment was made, the brand,

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and the quantity of shipment. Any person who violates these provisions shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000, or imprisoned not more than 6 months, or both.

Proposed Law

This bill would add Section 17508.5 to the Business and Professions Code to provide that any person who advertises on the Internet to sell cigarettes in California and who is subject to the provisions of the Jenkins Act to conspicuously disclose in the advertisement, all of the following:

- Any purchaser who buys cigarettes that are shipped into California is responsible for paying on each purchase the state excise tax and the state use tax.
- Next to the advertised price, the amount of the California excise tax and the California use tax that would be due based on the quantity ordered. The amount of each tax must be separately stated.
- A statement disclosing that, pursuant to federal law, the person selling or transferring the cigarettes is required to file with the Board of Equalization a copy of the invoice for each and every shipment of cigarettes made into California.

Background

Due to the state excise tax imposed on cigarettes and the sales tax due on the sale of cigarettes, many consumers have turned to the internet as a way of obtaining cigarettes from out-of-state sellers who do not charge the California taxes. To help track down the purchasers of cigarettes from out-of-state sellers, the Board began using the provisions in the Jenkins Act to require the sellers to provide the name and address of the purchasers so that the Board may bill them for the taxes due.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author. The purpose of this bill is to help the state enforce the excise tax and use tax provisions.
2. **This bill promotes the provisions of the Jenkins Act.** The Jenkins Act requires any person that sells or transfers cigarettes for profit in interstate commerce and ships the cigarettes into a state that imposes a tax on cigarettes to file by the 10th of each calendar month a copy of the invoice for each and every shipment of cigarettes made during the previous calendar month in that state. Many consumers who shop on the internet may not be aware of these provisions and think they are successfully evading the tax by purchasing cigarettes from out-of-state sellers over the internet. Requiring the information about the Jenkins Act to be posted on the each seller's website would inform the purchaser of the provisions so they may be less inclined to purchase over the internet for the sole reason of evading the tax.
3. **Penalty provisions recommended.** This bill requires any person who advertises on the internet to sell cigarettes to post certain information on their website advertising cigarettes for sale. However, this bill does not impose a penalty on a seller who fails to comply with the proposed requirements in this bill. Additionally,

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many of these sellers are located outside California, and the state would have no authority to enforce these provisions.

- 4. Provisions in this bill may be confusing for consumers in other states.** Requiring the seller to post information about California taxes due on a website advertising cigarettes for sale to consumers all over the world could be confusing for consumers in other states. For example, a consumer in the state of Texas may wonder why California taxes would be due on a purchase of cigarettes from a company in Virginia.
- 5. Suggested technical amendment.** This bill provides that a notice be placed on the website to indicate that a purchaser who buys cigarettes that are shipped to California is responsible for the excise tax and use tax due. However, Revenue and Taxation Code Section 30108 provides that if the seller has nexus in California, the seller has the duty to collect the tax from the buyer. It is suggested that this section be amended to reflect that duty imposed on the seller.
- 6. Related legislation.** Senate Bill 1766 (Ortiz) would require that every retail sale of a tobacco product in California be a vendor assisted face-to-face sale, unless the seller assures that all applicable taxes are paid and that no sales are made to persons under the age of 18.

COST ESTIMATE

Any costs associated with the provisions of this bill are expected to be absorbable.

REVENUE ESTIMATE

The provisions of this bill should have a positive impact on the state excise tax collected on sales of cigarettes and also on use tax collected on cigarettes purchased from out-of-state retailers. However, the Board has no way of measuring the potential impact these provisions may have, and therefore, cannot provide an estimate at this time.

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